COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion, pursuant to G.L. c. 159, §§ 12 and 16, into the collocation security policies of Verizon New England Inc. d/b/a Verizon Massachusetts	D.T.E. 02-8

REPLY BRIEF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

PUBLIC VERSION

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Introduction

As AT&T's initial brief demonstrated, Verizon's proposed changes in collocation rules are unsupported by the limited data it provided and violates the Telecommunications Act of 1996 (the "1996 Act" or "1996 Telecommunications Act"). Moreover, the lack of any factual connection between the proposal that Verizon made and the concerns raised by the Department in its *Vote and Order to Open Investigation* highlights the cynical and self-serving purpose of Verizon's proposal: use of the Department's legitimate question regarding security in the aftermath of September 11th to advance its own commercial interest. In this reply brief, AT&T does not seek to rebut every single erroneous argument and factual misstatement Verizon makes. Indeed, they are far too numerous for that, because Verizon's case – even by Verizon's standards – is unusually weak, both factually and legally. Only the more egregious arguments and misstatements are addressed here. AT&T's case is presented in its initial brief.

Argument

I. CONTRARY TO VERIZON'S CLAIMS, ITS PROPOSED RESTRICTIONS ON PHYSICAL COLLOCATION ARE PROHIBITED BY THE TELECOMMUNICATIONS ACT OF 1996 AND FCC REGULATIONS.

As stated in AT&T's Initial Brief, most, if not all of Verizon's proposal in this proceeding plainly violates the 1996 Telecommunications Act and the regulations promulgated by the FCC pursuant to that statute. *See* AT&T Initial Brief at 29-32. Indeed, Verizon's witnesses have admitted this. As Verizon Regulatory Director Peter Shepherd testified during the evidentiary hearings, the Department would need to petition the FCC for a waiver of its rules in order to approve the Verizon proposal. Tr. 1, at 249, line 4. *See also,* Exh. VZ MA-2, at 27, lines 15-18. Unhappy with the collocation rules that have been recently and repeatedly upheld by federal courts and the FCC, Verizon is using the security concerns raised in this proceeding in an attempt to flank these requirements to serve its competitive interest. What is more astounding

is that Verizon – in its effort to turn back the clock and regain policy territory it lost long ago – uses the very same arguments that have been rejected in past proceedings before the FCC, the D.C. Circuit Court of Appeals and this Department.

In any event, as demonstrated below, Verizon's attempt in its initial brief, to twist the FCC rules in an attempt to make its proposal consistent with them, is to no avail. Verizon's proposals constitute clear and blatant violations of the FCC's codification of the 1996 Telecommunications Act's preference for physical collocation.

A. VERIZON'S PROPOSAL TO CREATE A BLANKET RULE THAT WOULD PROHIBIT PHYSICAL COLLOCATION IN EVERY CENTRAL OFFICE THAT MEETS A SET OF ABSTRACT CRITERIA VIOLATES THE FCC'S RULES THAT REQUIRE PHYSICAL COLLOCATION EXCEPT IN SPECIFIC SITUATIONS THAT MUST BE JUSTIFIED BY THE ILEC.

Notwithstanding testimony from its own witnesses to the contrary, Verizon states on page 42 of its initial brief that no waiver of FCC rules would be required to implement its "virtual collocation only" proposal and cites as support its legal argument on pages 10 through 14 (Section II.A. of its brief). Verizon's argument begins with the statement that "[t]he FCC has already recognized that security and network reliability are valid factors that must be considered when evaluating whether physical collocation is technically feasible under the Act." As support Verizon cites to the *Local Competition Order*, ¶ 203, in a footnote and then quotes from ¶ 203 later in the text. Verizon's argument stops there.

Verizon's reliance on the FCC language it cites is misplaced. First, the paragraph cited and quoted does not address collocation duties under 47 U.S.C. § 251(c)(6). This paragraph addresses the incumbent's duty under § 251(c)(2) and § 251(c)(3) to provide interconnection and access to unbundled network elements. But even if the guidance provided in ¶ 203, does apply, Verizon's proposal to make virtual collocation the blanket rule for an unspecified number of central offices does not meet the requirements of ¶ 203. As the FCC makes clear in that

paragraph, "with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, *with clear and convincing evidence*, that *specific* and *significant* adverse impacts would result from the requested interconnection or access." *Id*. (emphasis supplied). Indeed, the FCC opens this discussion, at ¶ 198, with an unambiguous statement that "incumbent LECs must prove to the appropriate state commission that a *particular* interconnection or access point is not technically feasible." *Id*. (emphasis supplied).[1] The FCC rules require an intensive, fact specific investigation into a particular situation or arrangement where Verizon would have to prove that physical collocation cannot be provided *in that specific situation* for security reasons.[2] The FCC rules do not permit a blanket rule that denies physical collocation in all central offices satisfying a set of abstract criteria relating to security or any other criteria.

Moreover, the FCC's discussion addressing collocation, as opposed to interconnection and access to unbundled network elements, makes clear that a blanket rule prohibiting physical collocation in countless central offices is not permitted. In its *Local Competition Order*, the FCC noted that determinations regarding the technical feasibility of physical collocation should be made "on a case-by case basis." *Id.*, ¶ 602. In subsequent orders, the FCC has been more specific. In its *Collocation Remand Order*, the FCC recognized the ILECs' "powerful incentive" to assign (or not assign) space in central offices to advance its own competitive interests and

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[1] *See also*, ¶ 205 (imposes heavy burden on ILECs to prove infeasibility for any reason, including security reason, because ILECs have the relevant information).

[2] Moreover, in any particular investigation, it would be important evidence that physical collocation is already being provided in a particular central office. The FCC stated that "successful interconnection or access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point[.]" *Local Competition Order*, ¶ 204. Verizon would have to show why physical collocation is no longer technically feasible in a particular central office even though it has been provided to CLECs for years without a single network outage having resulted from such collocation.

adopted a number of rules intended to ensure that an ILEC's space assignment policies do not drive competitors to opt for virtual collocation when physical collocation is technically feasible because it would "frustrat[e] the 1996 Act's preference for physical collocation." *Id.*, ¶ 93. If subtle space assignment policies of an ILEC violate FCC rules when they encourage CLECs to opt for virtual collocation, then *a fortiori*, an outright ban on physical collocation in a number of the most important central offices in a metropolitan area violates FCC rules.

In summary, Verizon's legal argument that the FCC rules permit it to impose a blanket prohibition against physical collocation in countless central offices is without merit. The FCC makes clear the 1996 Act's preference for physical collocation over virtual and allows an ILEC to prohibit physical collocation only in very narrow circumstances for which it bears the burden of providing detailed specific evidence.

B. VERIZON'S PROPOSAL TO CREATE A BLANKET RULE THAT WOULD FORBID PHYSICAL COLLOCATION UNLESS THE COLLOCATOR'S EQUIPMENT CAN BE PHYSICALLY SEGREGATED AND ACCESSED THROUGH SEPARATE ENTRANCES AND PATHWAYS VIOLATES THE FCC'S RULES THAT LIMIT EQUIPMENT SEGREGATION AND SEPARATE ENTRANCE REQUIREMENTS TO SPECIFIC SITUATIONS THAT MUST BE JUSTIFIED BY THE ILEC.

In its Initial Brief, Verizon also argues that the FCC's collocation orders permit it to establish a blanket requirement of "separate space with separate entrances and/or pathways for all forms of physical collocation." *See* VZ Initial Brief, at 7. Verizon, however, ignores the firmly established federal requirement that the use of equipment segregation requirements and separate entrance requirements be limited to certain specific situations. In particular, FCC regulations require that physical separation of ILEC and CLEC equipment only occur if each of the following five conditions have been met:

> (i) Either legitimate security concerns, or operational constraints unrelated to the incumbent's or any of its affiliates' or subsidiaries competitive concerns, warrant such separation;

> (ii) Any physical collocation space assigned to an affiliate or subsidiary of the incumbent LEC is separated from space housing the incumbent LEC's equipment;
>
> (iii) The separated space will be available in the same time frame as, or a shorter time frame than, non-separated space;
>
> (iv) The cost of the separated space to the requesting carrier will not be materially higher than the cost of non-separated space; and
>
> (v) The separated space is comparable, from a technical and engineering standpoint, to non-separated space.

47 C.F.R. 51.323(i)(4), promulgated in *Collocation Remand Order* (August 8, 2001), ¶ 102.

When the FCC promulgated these regulations, it made the explicit finding that:

> . . . it would be unreasonable for the incumbent to require . . . separation measures *as a general policy*. As competitive LECs contend, mandatory separation of physical collocation space can substantially increase physical collocation costs. In addition, placement of DSL equipment, such as DSLAMs, in isolated or separate space can affect a collocator's ability to access unbundled local loops. Moreover, a requirement that all collocators place their equipment solely in a particular area of a central office could prematurely exhaust physical collocation space. Similarly, a requirement that separate entrances always be built could decrease the space available in the central office for collocation; and adding a new entrance to an existing structure could simply delay the requesting carrier's occupation and use of the incumbent LEC's premises, and increase the requesting carrier's costs.

Collocation Remand Order, ¶ 99 (emphasis supplied). Thus, Verizon seeks in this proceeding the very same policy that it sought before the FCC, a mandatory, general policy of separate entrances and separate pathways. The only problem is the FCC clearly rejected this approach little more than a year ago. Making Verizon's proposal even more outlandish is the fact that it recently appealed the FCC's decision on the matter to the D.C. Circuit Court of Appeals and *lost*. *See Verizon Tel. Co.* v. *FCC*, 292 F.3d 903, 912 (D.C. Cir. 2002).

Before the D.C. Circuit, Verizon argued that the separation limitations approved by the FCC "effectively [establish] a default rule that forecloses ILECs from requiring segregated space and separate entrances, thereby unduly interfering with the ILEC's fundamental right to manage

effectively the use of its property and its obligations to protect the security of its telecommunications infrastructure and the safety of its employees." Exh. VZ MA-1 at 16. The Court explicitly rejected this argument, finding that the "Commission did not ignore ILEC security concerns; rather, it found 'insufficient evidence to support a finding that [those] concerns require physical separation of collocated equipment from the incumbent's own equipment *in every instance*.'" *Id.* (quoting *Collocation Remand Order* at ¶101) (emphasis added). In other words, the Court upheld the FCC's determination that the evidence does not support giving an ILEC the right to establish a *blanket* requirement of segregated equipment and separate entrances.[3]

Verizon is not content, in every instance, to rely upon the very same arguments that have been rejected repeatedly by the FCC and federal courts. Perhaps acknowledging the difficulty it would face in convincing the Department to adopt these positions, Verizon became more creative during hearing testimony. In one response given by Mr. Shepherd, it became clear that Verizon is now attempting to fit its space separation proposal within the federal statute's "technical impracticality" exception to physical collocation:

> Q. You're saying that, notwithstanding [the fact that there are 169 CO's in Massachusetts where CLECs are currently collocated in Massachusetts], physical collocation is technically infeasible based upon security concerns; is that correct?
>
> A. [SHEPHERD] The requirement to provide physical collocation may in fact be determined to not be feasible if in analyzing whether providing physical collocation at that particular central office there were legitimate security concerns that would necessitate separating or securing Verizon's equipment from the collocator's physical collocation. If there was not space that would allow that,

[3] The Department should note that the D.C. Circuit's opinion was issued on June 18, 2002, after the terrorist attacks of September 11th. Verizon has made the argument that the FCC's *Collocation Remand Order* was issued before September 11th in an attempt to subvert its legitimacy. Exh. VZ MA-1 at 16, line 2. The D.C. Circuit Court was free to take notice of the terrorist attacks but chose not to do so. Verizon's implication that the FCC's rules were adopted in a contextual vacuum are thus meritless.

> then that type of a situation would rise to the level of being a legitimate security concern and a legitimate practical concern as to whether physical collocation should in fact be required at that central office.

Tr. 1, at 240-41.

The Department should reject Verizon's contorted argument. Equipment segregation cannot now suddenly become a part of the technical practicality inquiry used to determine whether physical collocation space is available. The FCC and the federal courts have specifically and separately addressed the segregation of ILEC and CLEC equipment, and specific limitations have been placed upon its implementation. *Verizon*, 292 F.3d at 912; *Collocation Remand Order*, ¶ 102. As the FCC stated in its *First Local Competition Order* with respect to the Act's physical collocation provisions : ". . . existing space or site restrictions should not be included within a technical feasibility analysis." *First Local Competition Order* (August 8, 1996), ¶ 201.

Verizon's hearing testimony is an attempt to blur the line between space exhaust, technical practicality and equipment segregation to achieve its goal of banishing CLECs from the central office. Under Verizon's logic, equipment segregation should be employed in every central office as a general rule, and if there is insufficient space to do so, physical collocation is technically impractical. The Department should ignore these games. The FCC and federal courts, well aware of the federal statute's limited technical impracticality exception to the general preference for physical collocation, have firmly decided that equipment segregation may be allowed only in very limited circumstances, subject to the five conditions set forth in 47 C.F.R. 51.323(i)(4). *Verizon*, 292 F.3d at 912; *Collocation Remand Order*, ¶ 102. Importantly, those five conditions make it impossible for an ILEC to use security as the only reason for denying physical collocation on the ground that segregated space is not available. This is because, under those five conditions, when an ILEC requires segregated space it may do so only

if it provides segregated *physical* space at a cost and on terms that are comparable to unsegregated space. Thus a requirement to use segregated space on account of security concerns alone can never be used by an ILEC to deny physical collocation altogether when unsegregated space is available. The plain language of federal regulations prevents such a result. 47 C.F.R. 51.323(i)(4).

Verizon's attempt to regain lost ground does not stop at is physical separation proposal. Verizon also attempts to reverse the clear precedent establishing CCOE as a viable means of collocation. Specifically, Verizon proposes to relocate existing cageless collocation arrangements to a "secured and segregated area of the CO or the conversion of such arrangements to virtual collocation where secured CO space is unavailable." VZ MA Initial Brief at 7. In proposing this measure, Verizon freely admits that it would be violating current regulatory rules. VZ Brief, at 8. This issue, much like Verizon's proposal for physical separation in every circumstance, was fully litigated before the FCC during the *Advanced Services* proceedings and later on appeal before the D.C. Circuit Court of Appeals – and Verizon lost both times.

As the Department noted in its Order opening this investigation, the FCC mandated that ILECs provide cageless arrangements in its *Advanced Services Order,* and the D.C. Circuit upheld this determination in its *GTE Serv. Corp.* v. *FCC*, 205 F.3d 416, 424-25 (D.C. Cir. 2000) decision. *See Vote and Order to Open Investigation* at 5. In response to these holdings, the Department overturned an earlier decision, and ordered the provision of cageless collocation arrangements in Massachusetts central offices. *See Teleport Petition*, D.T.E. 98-58 at 26 n. 20 (1999).

Much like its arguments for a blanket policy of physical separation, Verizon relies on tired arguments in support of its attack on CCOE. Perhaps the most astonishing evidence of this is Verizon's citation to the Department Order that initially rejected the provision of cageless collocation – an order that the Department subsequently overturned in light of the FCC's findings in the *Advanced Services Order*. *See* VZ Brief, at 31-32. Verizon does not seem to acknowledge that the Department has, in fact, overruled its earlier decision. *See Teleport Petition*, at 26 n. 20.

In addition, Verizon uses much the same argument it used in its appeal of the *Advanced Services Order* to the D.C. Circuit Court. As the *GTE* Court noted, Verizon argued that the language of the 1996 Act should be understood to require "the installation of a competitor's equipment in an area that is *physically separate* from the incumbent's own facilities." *GTE*, 205 F.3d at 424 (quoting GTE Brief, at 24). The Court explicitly rejected this argument, finding that "nothing in the statute can be read to *require* caged collocation, so the FCC surely was free to promulgate reasonable rules implementing physical collocation under a cageless regime." *Id.* at 425. The Court noted several findings within the *Advanced Services Order* to support its decision:

> The [Advanced Services Order] points out that caged collocation results in the 'inefficient use of the limited space in a LEC premises,' ¶42. A cageless regime, the Order notes, ensures that LECS do not place unreasonable minimum space requirements on collocating competitors; the rule thus has the effect of reducing the cost of collocation and reducing the likelihood of premature space exhaustion. ¶43. We find that the [FCC]'s interpretation in support of cageless collocation is reasonable and consistent with the statutory purpose of promoting competition . . . Indeed . . . it is hardly surprising that the FCC opted to prohibit LECs from forcing competitors to build cages, particularly given the alternative means available to LECs to ensure the security of their premises.

Id. Thus, Verizon is asking the Department to approve the very same physical separation requirement upon cageless collocation that was urged upon and rejected by the D.C. Circuit and the FCC.

What makes Verizon's proposals even more frustrating is its failure to point to any particularized threat that would make these clearly unlawful measures somehow justified. Within its brief, Verizon merely argues that these drastic measures have become necessary due to the "security concerns" that have arisen in a "post-September 11th environment." VZ Brief, at 31. Within discovery responses, Verizon claimed that its proposals would be able to prevent the security breaches documented in its discovery response to AG-VZ 1-1. Exh. Sprint-VZ 2-5. Verizon summarized these security breaches within its brief. VZ Brief, at 21. They included theft and vandalism, the unauthorized use of ID badges, doors being propped open, and unauthorized carrier testing on Verizon's side of the equipment. *See id.* None of these "breaches" have any logical connection to the ideologically driven terrorist acts of September 11th. Furthermore, as detailed below, these are the very same types of incidents that Verizon has complained about since the inception of collocation.

Examining some of the Bell Atlantic comments filed in 1998 and 1999 before the FCC during the *Advanced Services* proceedings is instructive. In comments dated September 25, 1998, Bell Atlantic argued against the provision of cageless collocation for essentially the same reasons it has brought to the fore in this proceeding. Bell Atlantic claimed at that time that cageless collocation would "expose the public switched network to damage and widespread service interruption." *Bell Atlantic Comments*, CC Docket No. 98-147 (September 25, 1998) at 32, <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=

2161110002>. Donald E. Albert, Bell Atlantic's Network Services Director of Competing Local Exchange Carrier Implementation at the time, filed a declaration attached to these comments which raised many of the same concerns raised in this proceeding. Mr. Albert referred to the cageless environment as a "ticking time bomb where a competitor's technician could mistakenly open the wrong equipment cabinet and begin to remove plug-ins, thereby adversely affecting Bell Atlantic's customer service." Declaration of Donald E. Albert at ¶ 5, CC Docket No. 98-147 (September 25, 1998), <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=2161110003>. Mr. Albert also decried the possibility of loss of property that would accompany CCOE arrangements. *Id.* at ¶ 6. Furthermore, Mr. Albert stated that video surveillance cameras and card key access systems were "inadequate in a multi-carrier environment, because they are reactive types of security that may identify the responsible party only after an incident has occurred." *Id.* at ¶ 9.

In a subsequent declaration, filed in Bell Atlantic's Opposition to Sprint's Petition for Reconsideration in the *Advanced Services* proceedings, Mr. Albert further complained about many of the same types of incidents pointed to in this proceeding. In this declaration, Mr. Albert warned of incidents involving broken locks at central offices and "collocator personnel accessing central offices without proper identification or using false identification." Declaration of Donald E. Albert at ¶ 6, CC Docket No. 98-147 (July 12, 1999), <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6008646528>.

In short, the "security breaches" Verizon points to in this proceeding have been before the FCC and this Department for years. The collocation rules that are currently in place were adopted with full awareness of these incidents. Verizon's attempt to portray these concerns as problems that require different policies due to the events of September 11th does not hold water.

Verizon never made a connection between the ideologically driven events of September 11th and the limited acts of vandalism and theft documented in this proceeding. Verizon could not even prove that these events were caused by the presence of collocators. Verizon's contrived complaints of supposed security problems resulting from collocation are the same ones that Verizon has expressed for years, and they should not take on any new urgency now.

With this in mind, Verizon's clearly unlawful proposals take on a cynical element. The FCC and Department have recognized that ILECs "have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors." *First Local Competition Order* at ¶ 585; *see also Teleport Petition*, D.T.E. 98-58 (July 30, 1999) at 13-14. It is now clear that Verizon is attempting to exercise its capability to impede competition in this proceeding. The Department must not permit it.

II. WHEN VERIZON CONDUCTED A SECURITY ANALYSIS THAT WAS NOT INFLUENCED BY THE ANTICOMPETITIVE MOTIVATIONS EXHIBITED IN THIS CASE, IT REVEALED NO SECURITY PROBLEM RELATED TO COLLOCATION.

After the events of September 11, 2001, the Vice President of Verizon Security requested that its Deputy Building Coordinators at each Massachusetts building location complete a "Security Inspection Report." This two page report includes sections on identification of the managing personnel, the type of building (*e.g.*, C.O), the type of area where the building is located, the perimeter protection implemented, the ways in which the building is accessed, the procedural security, the type of intrusion detection and monitoring, what needs to be assessed to correct security vulnerabilities, and a place for remarks. The Deputy Building Coordinators are asked to "Please use the Inspection Report to notify us of any deficiencies (where applicable) especially in the areas of guard service, access control, CCTV system, perimeter security and adherence to wearing Verizon Ids." Exh. AL-VZ 2-1.

Tellingly, the issue of collocation was hardly on the "radar screen" of the Vice President of Verizon Security. The only section of the report that refers to collocation is contained in the section relating to the type of building, where respondents are asked to state whether collocators are present and, if so, how many. Nowhere are questions raised about security deficiencies associated with the collocators. The only place available to remark on the collocators is in the remarks section, where not one Deputy Building Coordinator stated having a security issue with the collocators present at the building. Exh. AL-VZ 2-1.

Moreover, Verizon's Deputy Building Coordinators were able to identify security risks that could be addressed by more cost-effective and less controversial means than the radical ones contained in Verizon's proposal in this case. Question twenty on the Security Inspection Report asks "Is a Security assessment by Corporate Security required to correct any security vulnerabilities that exist?" The majority of the answers to this question identified security deficiencies that could be corrected with procedures and equipment that are well understood and routinely used for security purposes. One example comes from the report **<BEGIN PROPRIETARY>** XXX XXXXXX XX XXXX XXXXX XXX XXXXXXXX XXXX XXX XXXXX XXXX XX XXXXXXXX XX X XXXX XX XXXXX XXXXX XXXX XXXX XXXX XX X XXXXXXX X XXXX XX XXXXXX XXXXXX XX X XX XXXX XXXX XXXX XXXXXXXXXXXXXXXXX XXX XX XXXX XXXXXX XXXX XXXXXX XX XXXX XXXX X X XXXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXXX XXX XXXXXXXX XXXXXX XXXX XXXXX XX X XXXXX XX X X X XXXXXXXXX XXXX XXXX XXXXX XX XXX . **<END PROPRIETARY>** These security vulnerabilities could be diminished by 2 spaces the use of security cameras (*i.e.*, Closed Circuit Television), deployment of Card Reader Access Systems with anti-passback features, the use of guards at doors and to

check to see if the log is being used properly, and education of Verizon employees and non-Verizon employees regarding procedures and policy. None of the Deputy Building Coordinator reports contains evidence linking security risks with the presence of collocators located in Verizon buildings. Exh. AL-VZ 2-1.

Verizon's own representatives comment on the high level of security used by AT&T. One of the Verizon facilities inspected is located on two floors leased in an AT&T building. In the remarks section of the Security Inspection Report **<BEGIN PROPRIETARY>** XXXX XXXX XXX XXXX XXXXXX X XXX XXXXXXX X XXXX XXX XXX XXX XXXXX XXX XXXX XXXX XX XXX XX X XXXXXX XXXX XXXXX XX X XXXXX XXXX XXXX XXXXX XX X XXXXX XXXXX XX XXXX XXXXX X XXXXX XXXX XXX XXX X XX XXX XXXX XXXXX XXXXX XXXX XXX XXXXX XXXX XXX XXXX XXX XXX XXXXX XXXX XXXXXX X XXXXX XXX XXXXXX XXXX XXXX XXXX XXXX XX XXX XXXXX XXX XXXX XX XXXX XXX**<END PROPRIETARY>** Exh. AL-VZ 2-1. The assessment of Verizon's own representatives indicates that AT&T's effective security policy is more than adequate to create a safe and secure building despite the presence of equipment and representatives from other companies. Verizon does not need to go to the extremes of virtual collocation to create an equivalent security policy.

The analysis that Verizon prepared outside of this case demonstrates that the presence of collocators is not a cause of security deficiency in its buildings. It demonstrates that Verizon's claim that the presence of collocators creates security risks is an argument contrived for this case to advance a long-standing competitive objective unrelated to security.

III. VERIZON'S CASE PRESENTED IN ITS INITIAL BRIEF EXHIBITS COUNLTESS EXAMPLES OF FAILED LOGIC AND GAPING HOLES OF EVIDENCE.

Verizon's case is filled with so many holes that it is impossible to list them all. A few examples are identified here to demonstrate the lack of legitimacy in Verizon's proposal.

A. VERIZON'S PROPOSAL THAT COLLOCATION AT REMOTE TERMINALS BE SUBJECT TO ESCORT REQUIREMENTS OR MADE "VIRTUAL" DEMONSTRATES THE COMPLETE ABSENCE OF A RISK ANALYSIS AND THE OPPORTUNISTIC NATURE OF VERIZON'S PROPOSAL.

On page 18 of its initial brief, Verizon provides the reasons why it believes that physical collocation should be denied at remote terminals. Verizon argues that such facilities "were not built to accommodate multiple carriers in a physically collocated environment" and that they present the same opportunities for service disruption and tampering as COs. Those claims, however, were well known to the Department at the time the current collocation rules were put in place. Verizon never explains why the new risks that have been identified since September 11th are relevant to remote terminals. In fact, they are not, and Verizon's Initial Brief demonstrates why.

In its Initial Brief, Verizon points out that remote terminals are "extremely small" and they are sited in "remote location[s]." VZ Brief, at 18. These are precisely the attributes that make remote terminals an extremely unlikely target for a terrorist attack. As AT&T witnesses stated, terrorists choose targets that produce deadly and widespread effects, with maximum damage, destruction and disruption. *See* ATT Exh. 1, at 8-9. It is hard to take seriously any claim by Verizon that the small metal cabinets that can be found on street corners in any subdivision of any suburban town constitutes an attractive target for terrorists of any sort. Certainly, Verizon has offered no evidence on which the Department should change its existing rules regarding collocation at remote terminals.

B. VERIZON'S CLAIM THAT VIRTUAL COLLOCATION WILL REDUCE "FOOT TRAFFIC" SUFFERS FROM A LOGICAL DEFECT.

"Virtual collocation is needed to reduce foot traffic" has been Verizon's "mantra" in this case. Tr. 1, at 62-63. Verizon, however, has never explained why it believes that requiring virtual collocation will reduce foot traffic. Requiring virtual collocation will simply change the name of the company responsible for installing, maintaining and repairing equipment in central offices. It will not change the amount of equipment, or the repair requirements of the equipment. It will not change the number of times that the equipment will need to be upgraded, modified, or replaced in response to changing telecommunications demands, market characteristics and technological advances. All those equipment requirements will necessitate the same number of man-hours (if not more, given likely inefficiencies in Verizon having to maintain unfamiliar equipment) as are required today. The same number of man-hours means the same amount of "foot-traffic." Indeed, it is entirely likely that many of the same technicians who currently work for CLECs would end up working for Verizon: if CLECs are no longer maintaining their equipment, they cannot justify idle technicians on their payroll, and Verizon will need additional technicians to meet its additional responsibilities.

In short, Verizon has not demonstrated that its virtual collocation proposal will address its claimed problems of "too much foot traffic."

C. VERIZON'S PROPOSAL TO REQUIRE ESCORTS FOR CLEC TECHNICIANS TO USE THE BATHROOM IS UNWORKABLE.

Verizon has proposed an escort requirement for CLEC personnel requiring access to shared and common facilities. The effect of such a rule would put CLEC personnel in an impossible position. CLEC technicians working in a collocation cage who need to use a bathroom located in a common area would be required to ask for an escort. As AT&T's witness Nurse stated at the hearings:

> The dispute comes up in getting from the door to that area and then getting basically from the collocation area to the bathroom. Those are the ones that most frequently come up.
>
> Our problem with the Verizon proposal is the FCC orders are express on both of those circumstances, on what happens on separate entrances and what the criteria is and what happens on getting to common areas and what the criteria is. It's absolutely absurd that we would have to call ahead for an escort for a technician to go potty. That's what Verizon's proposal calls for.
>
> It's not the area where the equipment is. It's this transiting from the front door to wherever Verizon put the collocation room, or sometimes there's a door from the outside straight into that quadrant of the building, if you will, but you still have to get from that room over to the bathroom. So it's this marginal stuff of getting from the room to the bathroom or the front door to the collocation.

Tr. 2, at 465-466.

It is hard to imagine how such a process would work. Clearly designing a performance metric with a 95% standard, in which Verizon is allowed to "fail" 5% of the time, is not a reasonable process for the CLEC technicians affected. Moreover, the inability to make such an arrangement work is likely to increase costs for CLECs. The productivity levels of CLEC technicians under those circumstances could be expected to decline for obvious reasons. Even if alternative restroom facilities are available outside the central office, this will add extra time to a repair job and reduce productivity for that reason.

D. THE SO-CALLED "SECURITY BREACH" DATA THAT VERIZON RELIES ON ARE FLAWED AND IRRELEVANT TO THE ISSUE OF WHETHER A CHANGE IN COLLOCATION RULES IS NECESSARY TO ADDRESS SECURITY IN MASSACHUSETTS.

1. Verizon's Use Of "Security Breaches" From Outside Massachusetts Cannot Be Used To Justify Changes To Collocation Rules In Massachusetts.

On pages 20 through 23 of its initial brief, Verizon cites to data regarding security breaches from across all of its service territories as support for its proposal in this case.

Verizon's use of "security breach" data from outside Massachusetts, however, cannot be used to justify changes to collocation arrangements in Massachusetts. Verizon has presented no evidence regarding the security arrangements and collocation rules in those other jurisdictions. The Department, therefore, has no way to know whether the security breaches that occurred in other jurisdictions are caused by the absence of collocation arrangements and security procedures that currently exist in Massachusetts. It would be perverse to accept as proof that current Massachusetts arrangements and procedures need to be changed because of security breaches that would have been prevented by existing Massachusetts arrangements and procedures.

2. Verizon Cannot Rely On Its Failure To Present Relevant Security Breach Evidence To Argue That The Department Should Assume Data Not In The Record.

On page 22 of its initial brief, Verizon suggests that the Department should assume that the data regarding security breaches it provided in Exh. AG-VZ 1-1 is an understatement of all relevant evidence of security breaches. Verizon suggests that its data search criteria may not have turned up all relevant security breaches. VZ Brief, at 22, n. 33. Verizon states that reports that were classified differently may not have been included. *Id.*

Verizon is apparently turning the traditional concept of burden of proof on its head. Verizon contended that it needs changes to collocation rules because of security violations, but in its affirmative testimony presented no such evidence. In response to questions from other parties, it produced (what is claims is) a potentially incomplete list of violations because it misspecified the criteria used to collect the relevant data. It then asked the Department to fill in the (alleged) hole in its data caused by its own flawed methodology with assumed data that would support its case.

Using Verizon's reasoning, Verizon can meet its burden by failing to produce any data at all and then ask the Department to assume that the data, if produced, would support its case. The

Department should reject such nonsense and find that Verizon failed to meet a minimum burden of presenting evidence to justify its proposal.

3. Verizon's "Security Breach" Data Include Numerous Incidents That Verizon's Own Security Personnel Agree Are Not "Security Breaches."

In its initial brief, Verizon claims that its "Security experts stated *without contradiction* that each of the listed security violations is a serious infraction that poses a direct threat to the safety and reliability of Verizon's network." VZ Brief, at 22 (emphasis added). Verizon's statement is a gross misrepresentation of the record. AT&T's witnesses contested on several occasions Verizon's claim that the incidents reported in Exh. AG-VZ 1-1 represent "security breaches." Tr. 2, at 464. Indeed, Verizon's own witnesses admitted that a number of the incidents do not constitute security violations:

> A. [JACOBS] For clarification purposes, I would say it's more of an administrative issue rather than a security issue. I mean, there was something that was wrong here, but I don't want to draw the inference that something like that would be referred to the security department.
>
> Q. I see. So not all of the incidents that are attached in this response are actually security breaches.
>
> A. [JACOBS] That's correct.

Tr. 1, at 71-72. This is not surprising given that that the employee who classified these incidents as "security breaches" had no training to do that. Tr. 1, at 66-67.

E. VERIZON'S PROPOSAL DOES NOT EXPLAIN HOW IT INTENDS TO IMPLEMENT THE FCC'S REQUIREMENT THAT THE SECURITY REQUIREMENTS TO WHICH CLECS ARE SUBJECT BE NO MORE STRINGENT THAN THOSE APPLIED TO THE ILEC'S OWN EMPLOYEES AND CONTRACTORS.

47 C.F.R. 51.323(i) states in relevant part:

> An incumbent LEC may only impose security arrangements that are as stringent as the security arrangements that the incumbent LEC maintains at its own premises for its own employees or authorized contractors.

It is not at all clear how Verizon can comply with this FCC regulation if it is allowed to implement its proposal. Because this regulation requires Verizon to impose the same draconian security arrangements on itself, including a "virtual collocation only," it is unclear who will maintain the equipment. Does Verizon intend to contract with a neutral, third-party to maintain the equipment of all telecommunication carriers in a central office? There is nothing in Verizon's plan, or in its initial brief, that explains how its virtual collocation only proposal can possibly satisfy the FCC's requirement in 47 C.F.R. 51.323(i).

It became clear at the hearings that Verizon had given no thought to this problem:

> Q. On a going-forward basis, is Verizon placing any additional restrictions that would reduce foot traffic by Verizon employees or contractors -- again, beyond the fact that they have to carry IDs?
>
> A. [CRAFT] The answer is yes.
>
> Q. Can you elaborate?
>
> A. [CRAFT] We're looking at the issue of contractors and looking for ways to eliminate the numbers of contractors that have access to our facilities, to some of our facilities.
>
> Q. What sorts of ways?
>
> A. [CRAFT] What sorts of ways? One, with the cleaning crews, if we do have critical locations identified; it's an issue of fairness or parity. If we are converting locations to virtual, reducing the amount of foot traffic when it comes to the CLECs, there needs to be also an issue of fairness, a corresponding elimination or reduction of, say, for instance, cleaning personnel.
>
> Q. Any other ways?
>
> A. [CRAFT] That's the one that comes to mind.
>
> Q. Any other contractors, any others that come to mind, other than the cleaning crews?
>
> A. [CRAFT] Just cleaning people.
>
> A. [SHEPHERD] The difference there, though, that I would point out is that oftentimes when we bring another contractor into the building, such as

> a plumbing contractor or an electrical contractor or a painting contractor, they are there under the supervision of a real-estate person or a central-office building person. So they in effect are escorted into the building and in effect escorted out when their duties are done.
>
> Q. But in terms of the proposals before the Department right now, the only thing that you have stated for certain is the proposal to reduce -- eliminate foot traffic by the CLEC.
>
> A. [CRAFT] The only thing for certain? Yes.

Tr. 1, at 138-140.

Clearly, a Verizon plan that, for security purposes, excludes only Verizon *cleaning crews* at the same time that it excludes all CLEC personnel, technicians, equipment installers and contractors cannot possibly be a plan that complies with the FCC rule that requires an ILEC to impose security arrangements on itself that are as stringent as those it applies to CLECs.

Conclusion

For the reasons set forth above and in AT&T's initial brief, the Department should reject Verizon's proposed changes to the rules governing collocation arrangements in Massachusetts. Because the risks identified in this proceeding involve risks to CLEC equipment with concomitant degradation of service quality to CLEC customers, and because Verizon has not implemented procedures and equipment necessary to protect CLEC equipment, the Department

should order Verizon to do so, in accordance with AT&T's recommendations set forth in its Initial Brief.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

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